STATE OF MICHIGAN

MICHIGAN SUPREME COURT

SPECTRUM HEALTH HOSPITALS and SPECTRUM HEALTH UNITED, Appellees, vs WESTFIELD INSURANCE COMPANY, Appellant.	Michigan Supreme Court Docket No. 151419 Michigan Court of Appeals Docket No. 323804 17th Circuit Court Appeal No. 14-02515-AV HON. DONALD JOHNSTON 61st District Court Case No. 13-GC-2025 HON. J. MICHAEL CHRISTENSEN

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APPELLEES SPECTRUM HEALTH HOSPITALS' AND SPECTRUM HEALTH UNITED'S SUPPLEMENTAL BRIEF IN OPPOSITION TO WESTFIELD INSURANCE COMPANY'S APPLICATION FOR LEAVE TO APPEAL

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STATEMENT OF QUESTIONS PRESENTED FOR REVIEW

I. Whether *Miller v Auto-Owners Ins Co*, 411 Mich 633 (1981), which construed the No-Fault Act so as to avoid the textual conflict between MCL 500.3105(1) and MCL 500.3106(1) with regard to maintenance injuries, remains a viable precedent in light of *Frazier v Allstate Ins Co*, 490 Mich 381 (2011) and *LeFevers v State Farm Mut Auto Ins Co*, 493 Mich 960 (2013), neither of which dealt with maintenance injuries nor undermined the *Miller* Court's reasoning.

Plaintiffs/Appellees' Answer: "Yes."

Defendant/Appellant's Answer: "No."

II. Whether, after 34 years, *Miller* should now be overruled.

Plaintiffs/Appellees' Answer: "No"

Defendant/Appellant's Answer: "Yes."

III. Whether a decision of this Court overruling *Miller* should be given prospective application.

Plaintiffs/Appellee's Answer: "Yes."

Defendant/Appellant's Answer: "No."

INTRODUCTION

Under the No-Fault Insurance Act, MCL 500.3101 *et seq.* (the "Act"), an insurer is liable to pay personal protection insurance benefits "for accidental bodily injury arising out of the *ownership, operation, maintenance or use* of a motor vehicle as a motor vehicle." MCL 500.3105(1) (emphasis added). With this plain and unambiguous statutory language, our Legislature made clear its intent to provide coverage for injuries sustained while performing maintenance on motor vehicles. This coverage grant signifies that *maintenance* injuries are on the same level as and should, therefore, be covered to the same extent as *use* or *operation* injuries. Under *Miller v Auto-Owners Ins Co*, 411 Mich 633; 309 NW2d 544 (1981), for more than thirty years, that legislative intent has been upheld: maintenance injuries *are* compensable. Now, Appellant, Westfield Insurance Company ("Westfield" or "Appellant"), asks this Court to eviscerate the legislative's intent by interpreting the Act so that maintenance injuries are covered only under the rarest, most absurd circumstances, *if ever*. For the reasons set forth herein, Appellees, Spectrum Health Hospitals and Spectrum Health United ("Spectrum" or "Appellees") respectfully request that this Honorable Court deny Westfield's Application for Leave to Appeal and leave this long-standing Michigan precedent intact so that coverage for maintenance injuries continues, as our Legislature intended.

STATEMENT OF FACTS[1]

I. CIRCUMSTANCES GIVING RISE TO THE LITIGATION.

On May 5, 2012, Shawn Norman ("Norman") injured his right hand while changing a flat tire on his parents' 2004 Chevrolet Blazer. The incident took place in his parents' driveway. Following the incident, Norman received care and treatment for his injuries at

[1] In light of this Court's Order that the parties brief specific issues and "not submit mere restatements of their application papers," Appellees omit a full statement of facts and, instead, rely on the facts set forth in their application papers.

Spectrum, including the surgical repair of his right finger. Spectrum incurred $6,770.76 in medical expenses treating Norman's injuries.

On May 17, 2012 and August 7, 2012, Spectrum provided Westfield with UB billing forms, itemized statements of charges, and medical records documenting Norman's care and treatment. Westfield denied the claims, stating that Norman's treatment was "not related to a motor vehicle accident." In discovery, Westfield further articulated the basis for its denial as MCL 500.3106, stating as follows:

> MCL 500.3106 clearly states that accidental bodily injury does not arise out of the ownership, operation, maintenance or use of a parked motor vehicle as a motor vehicle unless one of [the] statutorily enumerated exceptions applies. In this case, it does not appear that any of the exceptions to the Parked Vehicle Exclusion, set forth in MCL 500.3106 apply. Therefore, Shawn Norman and his medical providers would not be eligible for No Fault benefits.

(Exhibit 1).

II. PROCEDURAL HISTORY.

On April 18, 2013, Spectrum filed suit in the 61st District Court. The parties filed cross-motions for summary disposition. The issue in both motions was whether Spectrum was required to show that one of the exceptions to the parked vehicle exclusion in MCL 500.3106(1) applied to the facts of the case. Spectrum argued that it was not required to make such a showing, relying on *Miller*, *supra*, in which this Court held that, in motor vehicle maintenance cases, compensation is required without regard to MCL 500.3106(1)'s parked vehicle exclusion. 411 Mich at 641. While conceding that *Miller* controls in motor vehicle maintenance cases; that, under that decision, Spectrum was not required to show that one of the exceptions to the parked vehicle exclusion applied; and that the District Court was bound by that decision, Westfield nonetheless argued that *Miller* was wrongly decided. Counsel for Westfield indicated, from the

beginning of this litigation, his intention to use this case as the "vehicle" to have *Miller* overturned. (See, e.g., Westfield's Br in Supp of its Mot for Summ Disp, p. 7).

The District Court concluded that the facts of this case were substantially similar to *Miller* and that, consistent with that holding, Spectrum was entitled to summary disposition. The District Court also concluded that because *Miller* controlled this matter, Westfield's denial of Norman's claim for benefits was unreasonable, entitling Spectrum to its attorney fees under MCL 500.3148. If Westfield sought to change the law, the District Court reasoned, there were several avenues for doing so, including reaching out to the Legislature or lobbyists, but choosing to do so through litigation exposed it to attorney fees under MCL 500.3148 being that its denial was directly contrary to established Michigan case law, regardless of whether or not Westfield agreed with that law. The District Court's Order and Judgment was entered March 3, 2014.

Westfield appealed to the Kent County Circuit Court, arguing again that (1) despite this Court's holding in *Miller*, Norman's injuries were not compensable under the No-Fault Act because none of the exceptions to MCL 500.3106(1)'s parked vehicle exclusion applied and (2) the District Court erred in granting Spectrum attorney fees because Westfield's denial was based on legitimate questions of statutory construction and interpretation.

The parties submitted briefs and the court heard oral argument. The Circuit Court rejected Westfield's arguments and, by Order dated September 3, 2014, affirmed the District Court's judgment in all respects. On September 23, 2014, Westfield filed an Application for Leave to Appeal with the Court of Appeals. On November 5, 2014, it filed a Bypass Application for Leave to Appeal with this Court.

By Order dated February 3, 2015, this Court denied Westfield's Bypass Application for Leave to Appeal. In its Order, the Court stated that it was "not persuaded that

the questions presented should be reviewed by this Court before consideration by the Court of Appeals." **(Exhibit 2)**.

By Order dated March 2, 2015, the Court of Appeals denied Westfield's Application for Leave. Significantly, in its order, the Court of Appeals stated that Westfield's application was "DENIED for lack of merit in the grounds presented." **(Exhibit 3)**.

On April 13, 2015, Westfield then filed with this Court its Application for Leave to Appeal from the Court of Appeals' March 2, 2015 Order. On January 29, 2016, this Court ordered oral argument on the application pursuant to MCR 7.305(H)(1) and directed the parties to submit supplemental briefs addressing two issues: (1) whether *Miller v Auto-Owners Ins Co*, 411 Mich 633 (1981), remains a viable precedent in light of *Frazier v Allstate Ins Co*, 490 Mich 381 (2011), and *LeFevers v State Farm Mut Auto Ins Co*, 493 Mich 960 (2013); and (2) if so, whether *Miller* should be overruled. **(Exhibit 4)**.

LAW AND ARGUMENT

I. STANDARDS OF REVIEW.

This Court reviews de novo the grant or denial of summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). The proper interpretation and application of statutory language is an issue of law, which the Court also reviews de novo. *Petersen v Magna Corp*, 484 Mich 300, 306; 773 NW2d 564 (2009).

A trial court's decision about whether an insurer acted "reasonably" in denying benefits involves a mixed question of law and fact. *Moore v Secura Ins*, 482 Mich 507, 516; 759 NW2d 833 (2008). What constitutes reasonableness is a question of law, reviewed de novo. But whether, under the particular facts of the case, a denial was reasonable is a question of fact, reviewed for clear error. *Id.* "A decision is clearly erroneous when 'the reviewing court is left

with a definite and firm conviction that a mistake has been made.'" *Id.* (quoting *Kitchen v Kitchen*, 465 Mich 654, 661-62; 641 NW2d 245 (2002)).

II. *MILLER* IS GOOD LAW AND REMAINS A VIABLE PRECEDENT, EVEN IN LIGHT OF *FRAIZER* AND *LEFEVERS*, NEITHER OF WHICH DEALT WITH MAINTENANCE INJURIES OR UNDERMINED THE *MILLER* COURT'S REASONING.

The first issue this Court directed the parties to address is whether *Miller* remains a viable precedent in light of *Frazier*, *supra*, and *LeFevers*, *supra*. The answer to that question, in short, is Yes. In *Miller*, this Court resolved a textual conflict between the treatment of maintenance injuries in MCL 500.3105(1) and 3106(1). *Miller* is well-reasoned, concise, and consistent with the principles of statutory interpretation, established case law, and the remedial nature of the No-Fault Act. Neither *Frazier* nor *LeFevers* dealt with maintenance injuries or undermined the *Miller* Court's reasoning.

a. The textual conflict between MCL 500.3105(1) and 3106(1) with regard to maintenance injuries and the *Miller* holding.

MCL 500.3105(1) sets forth the general grant of coverage for personal protection insurance benefits under the Act. It states as follows:

> Under personal protection insurance an insurer is liable to pay benefits for accidental bodily injury arising out of the ownership, operation, *maintenance* or use of a motor vehicle as a motor vehicle, subject to the provisions of this chapter.

MCL 500.3105(1) (emphasis added). Under this statute's plain language, accidental bodily injury arising out of the *maintenance* of a motor vehicle as a motor vehicle is covered by the Act. Maintenance injuries, just like "use" or "operation" injuries, are compensable.

The next provision, MCL 500.3106(1), commonly known as the parked vehicle exclusion, specifies that, in general, there is no personal protection insurance coverage in

circumstances involving a parked vehicle. This provision goes on to enumerate three exceptions to the general exclusion in paragraph (1):

> Accidental bodily injury does not arise out of the ownership, operation, maintenance, or use of a parked vehicle as a motor vehicle unless any of the following occur:
>
> (a) The vehicle was parked in such a way as to cause unreasonable risk of the bodily injury which occurred.
>
> (b) Except as provided in subsection (2), the injury was a direct result of physical contact with equipment permanently mounted on the vehicle, while the equipment was being operated or used, or property being lifted onto or lowered from the vehicle in the loading or unloading process.
>
> (c) Except as provided in subsection (2), the injury was sustained by a person while occupying, entering into, or alighting from the vehicle.

MCL 500.3106(1).

With regard to *maintenance* injuries, there is an obvious and irreconcilable conflict between these two provisions. While MCL 500.3105(1) grants coverage for maintenance injuries, the very next provision takes that coverage away in the case of a parked vehicle. Yet, all maintenance takes place on parked vehicles. In order for maintenance to be performed, the vehicle must necessarily be parked. None of the three statutory exceptions to the parked vehicle exclusion, however, deal with maintenance situations. In other words, these two provisions are in inherent conflict with each other because, as written, they simultaneously grant and deny coverage for maintenance injuries.

In *Miller*, this Court resolved that conflict in a well-reasoned, concise, and common-sense based opinion that is consistent with well-established rules of statutory construction, established case law, and the remedial nature of the no-fault act.

The plaintiff in *Miller* was severely injured when, while attempting to replace a pair of shock absorbers, his automobile fell on his chest. *Id.* at 636. He was working on the car in the parking lot of his apartment building. *Id.* He sought personal protection insurance benefits from his no-fault carrier, alleging that payment was required by MCL 500.3105(1)'s general coverage grant, which includes coverage for "maintenance" injuries. *Id.* The insurer defended on the grounds that the vehicle was "parked" at the time of the injury and, thus, coverage was excluded by MCL 500.3106(1) because none of the statutory exceptions applied. *Id.* at 637.

The trial court granted summary disposition to the plaintiff, finding that he was "maintaining" the vehicle under 3105(1) and that it was *not* "parked" within the meaning of 3106(1). *Id.* The Court of Appeals reversed, concluding that the vehicle was "parked" and remanded for a determination as to whether the plaintiff's injuries fell within one of the three statutory exceptions to the parked vehicle exclusion. *Id.* This Court reversed the Court of Appeals, first citing the "tension" explained *supra* between 3105(1) and 3106(1) when it comes to maintenance injuries and, then, examining the policies between the two provisions:

> The policy embodied in the requirement of § 3105(1) that coverage extend to "injury arising out of the * * * maintenance * * * of a motor vehicle as a motor vehicle" [ ] is to provide compensation for injuries, such as Miller's, incurred in the course of repairing a vehicle.
>
> The policy underlying the parking exclusion is not so obvious but, once discerned, is comparably definite. Injuries involving parked vehicles do not normally involve the vehicle as a motor vehicle. Injuries involving parked vehicles typically involve the vehicle in much the same way as any other stationary object (such as a tree, sign post or boulder) would be involved. There is nothing about a parked vehicle as a motor vehicle that would bear on the accident.
>
> The stated exceptions to the parking exclusion clarify and reinforce this construction of the exclusion. Each exception pertains to injuries related to the character of a parked vehicle as a motor

> vehicle[,] characteristics which make it unlike other stationary roadside objects that can be involved in accidents.

Id. at 639-640.

For example, the Court explained, the first exception in 3106(1) relates to vehicles parked so as to create unreasonable risk of injury and, the very act of parking "can only be done in the course of using the motor vehicle *as a motor vehicle*." *Id.* at 640 (emphasis added). Similarly, the exception for entering into or alighting from a vehicle "represents a judgment that the nexus between the activity resulting in injury and the use of the vehicle as a motor vehicle is sufficiently close" to justify coverage. *Id.* One must enter the vehicle in order to drive it just as one must alight therefrom when the trip is over.

Hence, the Court reasoned:

> Each of the exceptions to the parking exclusion thus describes an instance where, although the vehicle is parked, its involvement in an accident is nonetheless directly related to its character as a motor vehicle. The underlying policy of the parking exclusion is that, except in three general types of situations, a parked car is not involved in an accident as a motor vehicle. It is therefore inappropriate to compensate injuries arising from its non-vehicular involvement in an accident within a system designed to compensate injuries involving motor vehicles as motor vehicles.
>
> The policies underlying § 3105(1) and § 3106 thus are complementary rather than conflicting. Nothing of the policy behind the parking exclusion to exclude injuries not resulting from the involvement of a vehicle as a motor vehicle conflicts with the policy of compensating injuries incurred in the course of maintaining (repairing) a motor vehicle. *The terms of the parking exclusion should be construed to effectuate the policy they embody and to avoid conflict with another provision whose effect was intended to be complementary.*

Id. at 640-41 (emphasis added).

Construing the provisions in harmony, the Court concluded that the plaintiff's maintenance injury was compensable under MCL 500.3105(1) without regard to whether the vehicle might have been considered "parked" at the time the injury occurred. *Id.* at 641.

b. Neither *Frazier* nor *LeFevers* overruled the *Miller* holding or its rationale.

In 2011, this Court decided *Frazier v Allstate Ins Co*, in which the plaintiff was injured when she slipped and fell on a patch of ice while closing the passenger door of her car. 490 Mich at 386. The injury was not maintenance related and the Court made no mention of maintenance injuries or the *Miller* holding. Instead, the issue in *Frazier*, was whether the plaintiff qualified under the exceptions to the parked vehicle exclusion found in MCL 500.3106(1)(b), for injuries that are the direct result of physical contact with "equipment permanently mounted on the vehicle," or in subsection (c), for injuries incurred while "alighting from" the vehicle. *Id.* at 384.

With regard to the former, the Court clarified the scope of the term "equipment," explaining that, because the "equipment" must be "mounted on the vehicle," the constituent parts of the vehicle itself cannot be "equipment." *Id.* at 385. The plaintiff was only in contact with the door of her vehicle when she fell. She, thus, did not qualify under the exception because the door is a constituent part of the vehicle itself, not "equipment permanently mounted" thereon. *Id.* at 386.

With regard to the latter, the Court clarified the scope of the term "alight," explaining that it does not occur in a single moment, but rather as a result of a "process." *Id.* at 385. That "process" begins when an individual "initiates descent" from the vehicle and is completed when the individual has "successfully transferred full control of one's movement from reliance upon the vehicle to one's body." Such transfer is generally accomplished when "both

feet are planted firmly on the ground." *Id.* at 385-86. Because the plaintiff in *Frazier* already had both feet planted on the ground and was entirely in control of her body's movement, no longer relying on the vehicle itself, she had already completed the "alighting from" process. *Id.* at 387.

Concluding that the plaintiff fell within neither of the exceptions at issue, the Court held that defendant was not liable to the plaintiff for benefits, reversed the Court of Appeals, and remanded to the trial court for proceedings not inconsistent with the opinion. *Id.* at 387.

Two years later, this Court decided *LeFevers v State Farm Mut Auto Ins Co*, *supra*. The plaintiff in that case was injured while attempting to unload dirt from a dump trailer when the tailgate, which had been stuck, suddenly came loose causing him to lose his balance and fall approximately twelve feet onto a concrete base. *Id.* at 960; see also *LeFevers v State Farm Mut Auto Ins Co*, 2011 Mich App LEXIS 2194, at *1-2 (copy attached as **Exhibit 5**). Again, the plaintiff's injury was not maintenance related and the Court made no mention of maintenance injuries. Instead, the issue in *LeFevers*, as in *Frazier*, was whether the plaintiff's injury qualified under the exception to the parked vehicle exclusion for "equipment permanently mounted on the vehicle" and, specifically, whether the dump trailer's tailgate qualified as such "equipment."

The Court of Appeals had affirmed the trial court's denial of defendant's motion for summary disposition, finding that the tailgate *did* constitute "equipment" within the meaning of 3106(1)(b). In so ruling, the Court of Appeals relied on a single footnote in *Gunsell v Ryan*, 236 Mich App 204, 206, 210 n.5; 599 NW2d 767 (1999), holding that the rear door of a small semitrailer used to deliver mail was "equipment permanently mounted to the vehicle," and a

small piece of dicta from *Miller* suggesting that that the lift of a delivery truck or the "door of a parked car" might also constitute "equipment" permanently mounted on the vehicle. *See LeFevers*, 2011 Mich App LEXIS 2194, at *6-7.

In lieu of granting leave, this Court vacated the Court of Appeals' decision on the grounds that *Frazier* "effectively disavowed" those specific portions of *Gunsell* and *Miller* on which the Court of Appeals had relied. Importantly, this Court did not say that *Frazier* disavowed *Miller* or *Gunsell* in their entireties. Instead, the Court made very clear, with specific and precise reference, exactly what *Frazier* had done:

> Specifically, *Frazier* effectively disavowed as dicta the portion of *Miller*, *supra*, stating: "Section 3106(b) recognizes that some parked vehicles may still be operated as motor vehicles, creating a risk of injury from such use as a vehicle. Thus a parked delivery truck may cause injury in the course of raising or lowering its lift or the door of a parked car, when opened into traffic, may cause an accident. Accidents of this type involve the vehicle as a motor vehicle." 411 Mich at 640. *Frazier* also effectively disavowed the discussion of MCL 500.3106(1)(b) in *Gunsell*, *supra*, 236 Mich App at 210 n. 5 [which footnote stated that the rear door of the semitrailer at issue "was equipment permanently mounted on the vehicle."].

This Court was very clear to describe the portion of *Miller* that *Frazier* had "effectively disavowed," that being those few words suggesting that the lift of a delivery truck and the door of a parked car constitute "equipment" within the meaning of MCL 500.3106(1)(b). On remand, the *LeFevers* Court concluded, the parties should be allowed to expand the evidentiary record to determine whether the tailgate on the plaintiff's dump trailer was, in fact, "equipment" permanently mounted on the vehicle for purposes of the exception or simply a constituent part of the vehicle itself.

Thus, neither *Frazier* nor *LeFevers* dealt with vehicle maintenance or maintenance-related injuries. Instead, they dealt with the distinction between "equipment" and

the "constituent" parts of a vehicle for purposes of MCL 500.3106(1)(b). Neither case overruled *Miller's* rationale or holding that maintenance-related injuries are compensable without regard to whether the vehicle is parked.

c. This Court's decision in *Miller* was well-reasoned, concise, and consistent with the principles of statutory interpretation, established case law, and the remedial nature of the No-Fault Act.

First and foremost, the goal of statutory interpretation is to discern and give effect to the Legislature's intent. *Apsey v Mem'l Hosp*, 477 Mich 120, 127; 730 NW2d 695 (2007); *Bush v Shabahang*, 484 Mich 156, 166-67; 772 NW2d 272 (2009). In so doing, the Court looks first to the language of the statute and, if it is clear and unambiguous, that language is applied as written. *Apsey*, 477 Mich at 127; *Bush*, 484 Mich at 166-67. Where, however, the language leaves the statute's meaning ambiguous, "it is the duty of the courts to construe it, giving it an interpretation that is reasonable and sensible." *Petersen*, 484 Mich at 308. "[A] provision of the law is ambiguous only if it 'irreconcilably conflicts' with another provision or when it is *equally* susceptible to more than a single meaning." *Mayor of Lansing v Mich PSC*, 470 Mich 154, 166; 680 NW2d 840 (2004) (internal citations omitted; emphasis in original); *People v Gardner*, 482 Mich 41, 50 n.12; 753 NW2d 78 (2008).

By way of illustration, this Court found ambiguity due to irreconcilable conflict in *Klapp v United Ins Group Agency Inc*, 468 Mich 459; 663 NW2d 447 (2003), which dealt with whether an insurance agent was contractually entitled to renewal commissions. Under his contract, entitled "Agent's Agreement," the plaintiff, who had served as defendant's agent for seven years, was entitled to renewal commissions in accordance with a vesting schedule set forth therein. *Id.* at 464-65, 467. In fact, under the vesting schedule, an agent who had served just two years would have been entitled to a percentage of renewal commissions. *Id.* Yet, under a different document, entitled "Agent's Manual", which the Agent's Agreement incorporated by

reference, renewal commissions were not vested at all until an agent reached sixty-five years of age *and* had served as an agent for defendant for at least *ten* years. *Id.* This Court found the contractual language ambiguous because "while [the] plaintiff was entitled to renewal commissions under the vesting schedule, he [was] not entitled to renewal commissions under the Agent's Manual's definition of retirement." *Id.* at 467.

The language of MCL 500.3105(1) and 3106(1) is similarly ambiguous with regard to injuries incurred while performing maintenance on a motor vehicle. While maintenance injuries are compensable under section 3105(1), they are, at the same time, not compensable under 3106(1), which excludes coverage for parked vehicles except in three statutorily enumerated situations, none of which relate to maintenance. Like the contractual language in *Klapp*, these provisions irreconcilably conflict by providing and, at the same time, not providing coverage for maintenance injuries. Because of this ambiguity, some "construction" of the statute is required to properly ascertain the Legislature's intent. *Petersen*, 484 Mich at 308.

Moreover, in construing statutes, ambiguous or not, it is well-settled that a statute must be read as a whole; each provision should be interpreted so that "it works in harmony with the entire statutory scheme." *Bush*, 484 Mich at 167. In *Miller*, this Court did just that—attempting to harmonize the textual conflict in MCL 500.3105(1) and 3106(1) with regard to maintenance injuries. It's holding—that maintenance injuries are compensable under 3105(1) without regard to whether the vehicle is "parked" under 3106(1)—went no further than necessary to resolve the conflict. It did not hold that, so long as 3105(1) is satisfied, there is no need to satisfy 3106(1) in *any* parked vehicle case. Its holding was limited to maintenance cases because it is only in the case of *maintenance* that there is a conflict between the provisions. *Winter v*

Auto Club of Mich, 433 Mich 446, 457; 446 NW2d 132 (1989) (explaining that "the *Miller* holding is limited to the narrow circumstances of that case," and that where maintenance is not involved, there is "no 'tension' between § 3105(1) and § 3106(1)"); accord *Putkamer v Transamerica Ins Corp of Am*, 454 Mich 626, 632 n.5; 563 NW2d 683 (1997). The holding also accords with the fact that the No-Fault Act "is remedial in nature and is to be construed in favor of the persons who are intended to benefit from it." *Putkamer*, 454 Mich at 631.

In attempting to harmonize the MCL 500.3105(1) and 3106(1), which it was required to do, the *Miller* court examined the policies behind each provision. What was the legislative purpose in including the term "maintenance" in MCL 500.3105(1)'s coverage grant? To provide compensation for injuries incurred in the course of repairing a vehicle. *Miller*, 411 Mich at 639. What was the legislative purpose in MCL 500.3106(1)'s exclusion of parked vehicles? Generally, when parked, a vehicle is no different than any other stationary object, such as a tree or post. Thus, an accident involving a parked vehicle doesn't normally involve the vehicle *as a motor vehicle*. The three statutory exceptions to the parked vehicle exclusion represent situations where the injury *would* relate to the parked vehicle *as a motor vehicle*. *Id.* at 639-40.

This understanding of the legislative intent behind the parked vehicle exclusion has been reaffirmed many times since *Miller*. For example, in *Winter v Auto Club of Mich*, *supra*, decided eight years after *Miller*, this Court stated as follows:

> [T]he Legislature realized that it would be inherently difficult to determine when a *parked* vehicle is in use "as a motor vehicle." Accordingly, the Legislature specifically described in subsections (a) – (c) of § 3106(1) the limited circumstances when a parked vehicle is being used "as a motor vehicle."

433 Mich at 457. The *Miller* Court's analysis in this regard was reaffirmed again after *Winter*, and quoted directly, in both *Putkamer v Transamerica Ins Corp of Am*, 454 Mich at 633, and, as recently as 2004, in *Stewart v State*, 471 Mich 692, 698; 692 NW2d 376 (2004).

The policies behind the parked vehicle exclusion and 3105(1)'s grant of coverage for maintenance injuries, the *Miller* Court reasoned, are not inconsistent, but rather complement one another. *Miller*, 411 Mich at 641. Providing coverage for maintenance injuries is consistent with the policy behind the parked vehicle exclusion, because, as with each of the exceptions to the parked vehicle exclusion, a vehicle on which maintenance is being performed is a vehicle being used *as a motor vehicle*. Maintenance, that is, is directly related to the character of a motor vehicle *as a motor vehicle*.

To illustrate, MCL 500.3106(1)(c) exempts from the parked vehicle exclusion an injury incurred while "entering into" a vehicle. This represents a legislative judgment that the act of entering a vehicle with the intent of driving it is directly related to the vehicle's character *as a motor vehicle*: **To be driven, a vehicle must be entered**. See *Putkamer*, 454 Mich at 636 (noting that, when she was injured, the plaintiff was attempting to enter her vehicle for the purpose of traveling to her brother's home, and that such injury "appears to be exactly the kind of injury that the Legislature decided should be covered" when it established the exception to the parked vehicle exclusion in subsection (c)). Providing coverage for maintenance injuries is no different. The inclusion of "maintenance" injuries in MCL 500.3105(1)'s coverage grant represents a judgment that such injuries are directly related to the vehicle's character *as a motor vehicle*: **To be drivable, a vehicle must be maintained**.

Notably, this reading of Act, so as to provide coverage for maintenance injuries, is also consistent with this Court's holding in *McKenzie v Auto Club Ins Ass'n*, 458 Mich 214; 580

NW2d 424 (1998), that the phrase "as a motor vehicle" in MCL 500.3105(1) requires that the injury be closely related to the vehicle's "transportational function." *Id.* at 225-26. In *McKenzie*, this court relied on the "transportational function" theme of the no fault act to deny coverage. In *McKenzie*, while on a hunting trip, two men were asphyxiated while they slept in a camper that was attached to the bed of a pickup truck. *Id.* at 216. Due to improper ventilation of a propane fueled heater, carbon monoxide fumes leaked in to the camper and overcame the two men. A dispute over no fault benefits followed. *Id.*

The two men where "occupying" the parked motor vehicle as contemplated by MCL 500.3106(1)(c). Therefore, under MCL 500.3106(1) the accidental bodily injury suffered did "arise out of the ownership, operation, maintenance or use of a motor vehicle, *as a motor vehicle.*" However, this Court recognized that "the clear meaning of the no-fault act is that the Legislature intended coverage of injuries resulting from the use of motor vehicles when closely related to their transportational function and only when engaged in that function." *Id.* at 220. In *McKenzie*, this Court reasoned that the camper was being used as sleeping accommodations. *Id.* at 226. Therefore, despite the "as a motor vehicle" language of MCL 500.3106(1), there was an insufficient nexus between the injury and the transportational function of the motor vehicle.

Injuries sustained while performing maintenance on a motor vehicle, in contrast, *would* be consistent with the vehicle's transportational function. In order to serve their transportational function at all (i.e., in order to be drivable), vehicles must be maintained. Damaged windshields must be repaired; worn-out wiper blades and burned-out headlamps must be replaced; motor and transmission oils must be filled; and, as here, flat tires must be changed.

Westfield argues that *Miller* was wrongly decided because the statutes are clear and unambiguous—that MCL 500.3106(1)'s parked vehicle exclusion merely serves to limit the

coverage granted in 3105(1). Maintenance injuries are still covered, Westfield asserts, but like any other parked vehicle injury, they simply must fall within one of the three statutorily enumerated exceptions. This argument does not withstand scrutiny. Westfield's reading of the statute would render 3105(1)'s grant of coverage for maintenance injuries nugatory and ineffective in any reasonable sense of the words. Such construction of the Act cannot be the proper one as it is contrary to the well-settled rule of statutory construction that, to the extent possible, every word of a statute should be given effect; no part should be interpreted so as to render another part nugatory or ineffective. *Apsey*, 477 Mich at 127; *Altman v Meridian*, 439 Mich 623, 635; 487 NW2d 155 (1992).

Not surprisingly, in the course of this litigation, Westfield has been able to point to only two examples of situations where a maintenance injury would arguably fall within one of the three exceptions to the parked vehicle exclusion. Westfield does not argue that there are any situations in which the parked vehicle exclusion would not be triggered in the first place. A vehicle must necessarily be parked for maintenance to be performed. See *Willer v Titan Ins Co*, 480 Mich 1177, 1181; 747 NW2d 245 (2008) (Weaver, J., dissenting) ("It defies common sense to expect one to perform maintenance on one's vehicle while the vehicle is not parked.") Thus, under Westfield's interpretation of the Act, the parked vehicle exclusion will *always* be an issue.

While the exclusion will *always be triggered*, the three statutory exceptions to the rule will almost *never* apply. A maintenance related injury would fall within one of the exceptions only under the rarest, most absurd circumstances, if ever. With regard to the first exception, in 3106(1)(a), for vehicles "parked in such a way as to cause unreasonable risk" of bodily injury, Westfield asserts that, for example, a person might attempt to change a flat tire on a steep downhill grade and fail to use wheel chocks so that, "while jacking the vehicle, the force

of gravity draws the vehicle down, causing [it] to roll off the jack, striking the claimant." (Westfield's Br on App to the Kent Cnty Cir Ct, p. 23). Not only is this an almost unfathomably rare circumstance, the underlying assumption is that the Legislature *intended* to cover maintenance injuries where the claimant parked unreasonably, and *not* those injuries where, as here, the vehicle was parked safely in Norman's parents' driveway while the maintenance was being performed.

Westfield proffers no examples where a maintenance injury would fall within the second exception to the parked vehicle exclusion, for injuries that are "a direct result of physical contact with equipment permanently mounted on the vehicle, while the equipment is being operated or used, or property being lifted onto or lowered from the vehicle in the loading or unloading process." MCL 500.3106(1)(b). Obviously, with only two hands, a person cannot be expected to perform maintenance on his vehicle, while, at the same time, operating equipment permanently mounted thereon or while also loading or unloading the vehicle.

With regard to the third and last exception, for injuries sustained "while occupying, entering into, or alighting from the vehicle," Westfield offers the example of a mechanic entering a vehicle to do some "work on the interior" and while having one foot inside the vehicle, "loses his balance on a greasy floor and falls out of the vehicle and onto the ground." (Westfield's Br on App to the Kent Cnty Cir Ct, p. 24). Again, it is rare maintenance indeed that occurs on the *interior* of a vehicle. And, even more importantly, the assumption underlying Westfield's example is that the Legislature *intended* only to cover interior maintenance injuries and yet exclude the, much more common, maintenance that occurs under the vehicle's hood.

Again, the primary rule of statutory interpretation is to discern legislative intent. To accept Westfield's construction, the Court would have to conclude that the Legislature added

the term "maintenance" to MCL 500.3105(1)'s coverage grant with the intention that only the rarest, most absurd maintenance injuries actually get coverage; and that, garden variety vehicle maintenance —of which, changing a flat tire is perhaps the most prime example—be excluded. Our Legislature cannot have intended such a nonsensical result.

A result is "absurd" and some judicial reformation of a statute, therefore, appropriate where it is "quite impossible that [the Legislature] could have intended the result." *Cameron v Auto Club Ins Ass'n*, 476 Mich 55, 78-79; 718 NW2d 784 (2006) (Markman, J., concurring); *Regents of the Univ of Mich v Titan Ins Co*, 487 Mich 289, 346; 791 NW2d 897 (2010) (Markman, J., dissenting), overruled on other grounds in *Joseph v Auto Club Ins Ass'n*, 491 Mich 200; 815 NW2d 491 (2012).

As Justice Markman has explained:

> [T]he "absurd results" rule is one that complements and reinforces the doctrine of interpretivism. Cf. *People v McIntire*, 461 Mich. 147; 599 N.W.2d 102 (1999), rev'g *People v McIntire*, 232 Mich. App. 71; 591 N.W.2d 231 (1998); *Piccalo v Nix*, 466 Mich. 861; 643 N.W.2d 233 (2002). As observed by Justice Scalia, "it is a venerable principle that a law will not be interpreted to produce absurd results." *K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, n2; 108 S. Ct. 1811; 100 L. Ed. 2d 313 (1988) (Scalia, J., concurring in part and dissenting in part). The "absurd results" rule underscores that the ultimate purpose of the interpretative process is to accord respect to the judgments of the lawmakers. While it must be presumed that these judgments are almost always those reflected in the words used by the lawmakers, in truly extraordinary cases, exercise of the "judicial power" allows recognition of the fact that no reasonable lawmaker could conceivably have intended a particular result As Justice Kennedy observed in a concurring opinion in *Public Citizen v United States Dep't of Justice*, 491 U.S. 440, 470; 109 S. Ct. 2558; 105 L. Ed. 2d 377 (1989), the "absurd results" rule demonstrates a respect for the coequal Legislative Branch, which we assume would not act in an absurd way.

Id. at 79-80.

Thus, even if this Court agrees with Westfield that a plain reading of the statutes subjects even maintenance injuries to the parked vehicle exclusion, the absurdity of the result opens the statute to interpretation. It is "quite impossible" to imagine that our Legislature included the term "maintenance" in the general coverage grant with the intention of covering only the rarest, most absurd maintenance injuries and not covering what any reasonable person would think of when they hear the word "maintenance."

In this regard, it also bears mentioning that the *Miller* Court's holding is consistent with the definition of "parking" found in MCL 257.38 of the Motor Vehicle Code, which states:

> "Parking" means standing a vehicle, whether occupied or not, upon a highway, when not loading or unloading *except when making necessary repairs*.

MCL 257.38 (emphasis added). Under this definition, a vehicle on which maintenance is currently being performed is not a "parked" vehicle. The motor vehicle code makes a distinction between a parked vehicle and one undergoing necessary repairs. The *Miller* holding—that maintenance injuries are compensable without regard to whether the vehicle is "parked" under MCL 500.3106(1)—accords with this definition. See *People v Mazur*, 497 Mich 302, 313; 872 NW2d 201 (2015) (Under the doctrine of *in pari materia*, "statutes that relate to the same subject or that share a common purpose should, if possible, be read together to create a harmonious body of law."); *IBM v Dep't of Treasury*, 496 Mich 642, 652; 852 NW2d 865 (2014) (same).

For all of these reasons, *Miller* is good law and remains a viable precedent even in light of this Court's more recent decisions in *Frazier* and *LeFevers*.

III. UNDER THE DOCTRINE OF STARE DECISIS, *MILLER* SHOULD NOT NOW BE OVERRULED.

The second issue this Court asked the parties to address is, if *Miller* is still a viable precedent, whether it should be overruled. The answer, in short, is No. Not only was *Miller* correctly decided, it should be adhered to under the doctrine of stare decisis because it is practical and workable, and neither reliance interests nor changes in law or fact justify overturning it now, 34 years after it was decided.

In determining whether to overrule a case, this Court must be mindful of the doctrine of stare decisis. "Stare decisis is short for *stare decisis et non quieta movere*, which means 'stand by the thing decided and do not disturb the calm." *Petersen*, *supra* at 314. "It attempts to balance two competing considerations: the need of the community for stability in legal rules and decisions and the need of courts to correct past errors." *Id.* Although stare decisis is not an "inexorable command," abiding by an established precedent under the doctrine is "the preferred course because it promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process." *Robinson v City of Detroit*, 462 Mich 439, 463; 613 NW2d 307 (2000).

In deciding whether to overrule established precedent, this Court looks first to whether the previous decision was wrongly decided. *Id.* at 464. Even where the Court concludes that it was, it must also consider "(1) whether the decision defies practical workability, (2) whether reliance interest would work an undue hardship if the decision were overturned, and (3) whether changes in the law or facts no longer justify the decision." *Petersen*, 484 Mich. at 315; *Robinson*, 462 Mich at 464.

As set forth above, *Miller* was correctly decided because it is well-reasoned, concise, and consistent with the principles of statutory interpretation, established case law, and the remedial nature of the No-Fault Act. Yet, even if the Court disagrees, the decision should not be overruled.

First, *Miller* does not "defy" practical workability. The holding is limited, simple, and predictable. Under *Miller*, if an injury arises out of motor vehicle maintenance, compensation is required under MCL 500.3105(1) without regard to whether the vehicle might be considered "parked" under 3106(1). Restated, maintenance injuries are compensable. Whether an activity qualifies as maintenance is generally an easy-to-apply analysis and, for 34 years, insurance companies, policy holders, health insurers and consumers alike have done so. The issue has not led to a great deal of litigation because the analysis is simple. Yet, under Westfield's construction of the statute, the analysis becomes much more complex. If MCL 500.3106(1)'s parked vehicle exclusion is always triggered in maintenance injury cases, insurance companies, policy holders, health insurers and consumers will inevitably disagree about whether one of the three exceptions to the parked vehicle exclusion apply, creating the need for intensive fact analysis and, in some cases, protracted litigation, especially, for example, as to whether the vehicle was unreasonably parked at the time of the injury.

Second, reliance interests favor upholding the decision. In considering this factor, "the Court must ask whether the previous decision has become so embedded, so accepted, so fundamental, to everyone's expectations that to change it would produce not just readjustments, but practical real-world dislocations." *Robinson*, *supra* at 466. *Miller* has been the law—and maintenance injuries have been compensable under the No-Fault Act—for 34 years. Surely, 34 years is long enough for a decision to have become sufficiently "embedded" so that its upheaval

would produce "practical real-world dislocations." Indeed, for 34 years consumers and insurance companies alike have understood and expected maintenance injuries to be compensable under the *Miller* decision. Insurance companies have charged, and consumers have paid, premiums based upon this settled rule of No-Fault law. If the Court overrules the decision now, it will result in a windfall to insurance companies who have set *and collected* premiums that account for this known risk. Moreover, whereas now, under *Miller*, consumers have certainty that if they are injured in a maintenance related situation, No-Fault will cover their reasonable and necessary medical expenses. If this Court reverses *Miller*, consumers will be forced to negotiate with health carriers to ensure that health plan terms make provision for all the contingencies involved in determining whether no fault coverage will exist for any motor vehicle maintenance injury. Given the idiosyncratic nature of this risk, it is likely that only the most sophisticated consumers will anticipate this potential medical coverage gap and negotiate with their health insurer accordingly. Thus, Westfield's construction of MCL 500.3106 will make it more difficult to predict outcomes and to assess risk.

Third, the legal and factual justifications for this Court's decision in *Miller* are as true today as they were in 1981. With the No-Fault Act, our Legislature created a comprehensive statutory scheme of reparation for injuries suffered in motor vehicle accidents with the objective of providing "assured, adequate, and prompt" recovery of economic losses. *Perez v State Farm Mut Auto Ins Co*, 418 Mich 634, 647; 344 NW2d 773 (1984); *Shavers v Attorney General*, 402 Mich 554, 578-79; 267 NW2d 72 (1977). That objective has not changed since *Miller* was decided. That people sometimes suffer injuries while performing motor vehicle maintenance has not changed since *Miller* was decided. And that MCL 500.3105(1) provides coverage for

"maintenance" injuries has not changed since *Miller* was decided. In short, no changes in the law or fact would justify reversal of this well-reasoned and long-standing Michigan precedent.

IV. EVEN IF THE COURT CONCLUDES THAT *MILLER* SHOULD BE OVERRULED OR LIMITED, THE DECISION SHOULD BE APPLIED PROSPECTIVELY.

In the event this Court overrules *Miller,* the decision should be given prospective application. Although the general rule is that this Court's decisions are given retroactive effect, this Court adopts a more flexible approach if injustice would result from full retroactivity. *Bezeau v Palace Sports & Entertainment, Inc*, 487 Mich 455, 462; 795 NW2d 797 (2010); *Pohutski v City of Allen Park*, 465 Mich 675, 695-96; 641 NW2d 219 (2002). "For example, a holding that overrules settled precedent may properly be limited to prospective application". *Pohutski*, *supra* at 696. In determining whether to depart from the general rule of retroactivity, this Court first asks the threshold question of whether the decision "clearly establishe[s] a new principle of law." *Id.* If so, the Court goes on to consider the following three factors: (1) the purpose to be served by the new rule; (2) the extent of reliance on the old rule; and (3) the effect of retroactivity on the administration of justice. *Id.*

The first question then is whether a decision overruling *Miller* would establish a new principal of law. Because such a decision would be inconsistent with how § 3106 has been interpreted and applied for the past three decades, it would. For example, in *Bezeau v Palace Sports & Entertainment, Inc*, this Court concluded that its decision in *Karaczewski v Farbman Stein & Co,* 478 Mich 28; 732 NW2d 56 (2007) which overruled a long-standing interpretation of the Workers' Compensation Act as inconsistent with the statute's plain language, established a new principal of law. *Bezeau, supra* at 463. The Court explained that although *Karaczewksi* had "interpreted the statute consistently with its plain language, the Court's interpretation established a new rule of law because it affected how the statute would be applied to parties in workers'

compensation cases in a way that was inconsistent with how the statute had been previously applied." *Id.* Similarly, in *Pohutski v City of Allen Park*, this Court overruled a long-standing interpretation of the governmental tort liability act as contrary to the clear and unambiguous language of the statute. *Pohutski*, *supra* at 695. Again, the Court noted that although it was interpreting the statute consistently with its plain text, the decision, nonetheless, announced a new rule of law because it was contrary to the Court's previous interpretation of the statute. *Id.* at 696.

Indeed, it would seem obvious that a decision of this Court which interprets a statute in a manner contrary to how the statute has long-been interpreted announces a "new" rule of law. At present, *Miller* is binding on every court of this state. It is the law and will remain so unless and until this Court *changes* it. Moreover, as this Court has previously explained, the "resolution of the retrospective-prospective issue ultimately turns on considerations of fairness and public policy." *Riley v Northland Geriatric Center*, 431 Mich 632, 644; 433 NW2d 787 (1988). In making its determination, "the Court must take into account the *total situation* confronting it and seek a *just and realistic solution* of the problems occasioned by the change." *Id.* at 645 (emphasis added); *see also Pohutski*, *supra* at 695 (citing the same language and explaining that, in ruling on retroactivity versus prospectivity, the Court had taken into account the entire situation confronting it). To treat a long-standing statutory interpretation that has been binding upon all of the lower courts of this state for more than three decades as though it never existed is contrary to this overall goal. This Court, as it did in *Bezeau* and *Pohutski*, should take into account the entire situation confronting it. Because *Miller's* interpretation of no fault coverage for motor vehicle maintenance injuries has been the law of this State for more than 30 years, a decision overruling *Miller* establishes a new rule of law.

The next step, then, is to weigh the remaining factors in the retrospective-prospective analysis, the first of which is the purpose to be served by the new rule. The purpose of a decision overruling *Miller* on the ground that it is not found in the plain language of the statute would be to interpret the statute consistently with the Legislature's apparent intent in drafting §3106. Prospective application would further this purpose and remain consistent with the overall goal of fairness. *See, e.g*, *Riley*, *supra* at 646 (finding that the purpose of the new rule, which was "to correct a serious error in the interpretation of a statute," "would best be furthered" by prospective application); *see also Pohutski*, *supra* at 697 (finding that prospective application would further the purpose of correcting an error in statutory interpretation).

The reliance interests in this case weigh heavily in favor of prospective application. Since 1981, motor vehicle maintenance injuries have been covered under the No Fault Act. Spectrum should not be punished for relying on this settled rule of no-fault law. At the time Spectrum filed its Complaint in this case, *Miller* unequivocally controlled the outcome of this dispute. Westfield and each lower court that considered this matter readily conceded this point.

Of course, it is not only medical providers, like Spectrum, who have relied on *Miller's* interpretation of the scope of motor vehicle maintenance injury coverage under the No Fault Act. Unless and until this Court took it up, insurance companies also knew that the lower courts of this state were bound by and would apply *Miller*. Surely they did not fail to take this fact into account while setting and collecting their premiums over the past 34 years. Thus, assuming this Court now decides to overrule *Miller*, it is the medical providers (who have submitted their claims and pursued them in court based upon this settled rule of no-fault law) and people like Mr. Norman (who have paid the insurance premiums that undoubtedly reflect this

known risk) who will suffer the consequences of the decision, not the insurance companies. Under these circumstances, the reliance interests at issue weigh in favor prospective application.

As to the final factor in the analysis, it is hard to gauge in advance what effect the overruling *Miller* will have on the administration of justice. Yet, because it has been the law of this state for more than 30 years, and because innumerable insurance decisions have been made and premiums set and collected based upon its existence, there will most assuredly be a negative impact on the administration of justice. Prospective application will aid in keeping that effect minimal.

If this Court determines *Miller*, which has been the law of this state for nearly three decades, should be overruled, Spectrum Health Hospitals and Spectrum Health United ask that the decision be applied prospectively. The reliance interests in this case demand that result.

CONCLUSION AND RELIEF REQUESTED

For the reasons set forth above, Spectrum respectfully requests that this Honorable Court deny Westfield's Application for Leave to Appeal in all respects.

MILLER JOHNSON
Attorneys for Appellees Spectrum

Dated: March 11, 2016

By */s/ Andrew D. Oostema*
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EXHIBIT 1

STATE OF MICHIGAN

IN THE 61st JUDICIAL DISTRICT COURT

SPECTRUM HEALTH HOSPITALS, and
SPECTRUM HEALTH UNITED (Norman),

Plaintiffs,

v

Docket No: 13-GC-2025
Hon. Benjamin H. Logan II

WESTFIELD INSURANCE COMPANY,

Defendant.

MILLER JOHNSON
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DEFENDANT, WESTFIELD INSURANCE COMPANY'S, RESPONSE TO PLAINTIFFS' FIRST SET OF REQUESTS FOR ADMISSIONS

NOW COMES Defendant, Westfield Insurance Company, by and through its attorney, the Law Offices of Ronald M. Sangster PLLC, by Ronald M. Sangster Jr., and for their Response to Plaintiffs' First Requests for Admissions to Defendants, states as follows:

GENERAL OBJECTIONS

(1) On the advice of counsel, Defendant objects to Plaintiffs' definitions and instructions to the extent that they attempt to impose anything other than the normal meaning to words and the requirements of the Michigan Court Rules. Defendant has responded to Plaintiffs' Requests for Admissions using the ordinary and commonly understood meaning of the words used by Plaintiffs.

(2) On the advice of counsel, Defendant objects to Plaintiffs' Requests for Admissions to the extent that they are overly broad, unreasonably burdensome, and designed to harass Defendant.

(3) On the advice of counsel, Defendant objects to Plaintiffs' Requests for Admissions to the extent that they are compound.

(4) On the advice of counsel, Defendant objects to Plaintiffs' Requests for Admissions to the extent that they seek information that is protected by the attorney-client privilege.

(5) On the advice of counsel, Defendant objects to Plaintiffs' Requests for Admissions to the extent that they seek information that is protected by the work-product doctrine.

(6) On the advice of counsel, Defendant objects to Plaintiffs' Requests for Admissions to the extent that they seek information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence.

(7) On the advice of counsel, Defendant objects to Plaintiffs' Requests for Admissions to the extent that they are premature. Discovery is continuing.

(8) On the advice of counsel, Defendant objects to Plaintiffs' Requests for Admissions to the extent that they request information not in Defendant's possession, custody or control.

(9) On the advice of counsel, Defendant reserves the right to object at the time of Trial to the admissibility of information disclosed in its responses to Plaintiffs' Requests for Admissions.

(10) All of Defendant's responses to Plaintiffs' Requests for Admissions are subject to the general objections stated above.

Defendant, Westfield Insurance Company, hereby incorporates by reference their objections and Answers to Plaintiffs' First Discovery Request filed in connection with the instant litigation.

1.) Admit that on May 2, 2012, Shawn Norman sustained bodily injury arising out of maintenance of a motor vehicle.

RESPONSE:

After making reasonable inquiry, the information known or readily obtainable is insufficient to enable Defendant to admit or deny this request. Defendant states that based solely upon information derived from the claim file materials, Shawn Norman was injured while attempting to change a tire on his parents' motor vehicle on May 5, 2012. Defendant has subpoenaed Shawn Norman to appear for a deposition on August 9, 2013, to obtain further information regarding the subject accident.

Defendant reserves the right to amend its response to this Request for Admission during the course of discovery.

2.) Admit that Plaintiff provided medical care and treatment to Shawn Norman on May 5, 2012 and May 10, 2012.

RESPONSE:

Defendant admits that it is within the possession of a medical reports and billing ledgers for services provided by the Plaintiffs to Shawn Norman on May 5, 2012 and May 10, 2012.

Defendant reserves the right to amend its response to this Request for Admission during the course of discovery.

3.) Admit that Plaintiff's charges for the treatment of Shawn Norman total $6,770.76.

RESPONSE:

Admitted in part and denied in part. Defendant admits that based solely upon information derived from the allegations contained within Plaintiffs' Complaint, Plaintiffs are claiming unpaid charges in the amount of $6,770.76. However, based on the medical records and billings submitted by Plaintiffs to the Defendant, to date, Defendant has only received billings totaling $6611.82.

Defendant states that it is not currently in possession of the complete medical records or billing records pertaining to Plaintiffs' treatment of Shawn Norman, which are at issue in the instant litigation.

Defendant reserves the right to amend its response to this Request for Admission during the course of discovery.

4.) Admit that the medical care and treatment provided by Plaintiff to Shawn Norman on May 5, 2012 and May 10, 2012 (*sic.* are) related to injuries sustained in the May 2, 2012 motor vehicle maintenance incident.

RESPONSE:

After making reasonable inquiry, the information known or readily obtainable is insufficient to enable Defendant to admit or deny this request. Counsel for Defendant has not yet received the entire set of medical and billing records from Plaintiffs as requested within its discovery requests to Plaintiffs. Defendant admits only that Shawn Norman was involved in an incident while apparently changing a tire on May 5, 2012 and that he sought treatment with the Plaintiffs following the subject incident on May 5, 2012 and May 10, 2012.

Defendant reserves the right to amend its response to this Request for Admission during the course of discovery.

5.) Admit that the medical care and treatment provided by Plaintiff to Shawn Norman was medically necessary and the charges for the incurred medical treatment are reasonable.

RESPONSE:

After making reasonable inquiry, the information known or readily obtainable is insufficient to enable Defendant to admit or deny this request. Counsel for Defendant has not yet received the entire set of medical and billing records from Plaintiffs as requested within its discovery requests to Plaintiffs.

Defendant reserves the right to amend its response to this request for admission during the course of discovery.

6.) Admit that Defendant received the following information on this claim on May 17, 2012:

a. Itemized Statement regarding Plaintiff's charges;
b. UB04 form; and
c. Medical records documenting Plaintiff's charges.

RESPONSE:

Defendant admits only that it received partial medical records and billing ledgers for services provided to Shawn Norman on May 5, 2012 and May 10, 2012. Counsel for Defendant has not yet received the entire set of medical and billing records from Plaintiffs as requested within its discovery requests to Plaintiffs.

As to the balance of this request, after making reasonable inquiry, the information known or readily obtainable is insufficient to enable Defendant to admit or deny this request. Defendant is in the process of determining precisely when the medical expenses were received by Defendant's medical expense auditing company, Rising Medical Solutions.

Defendant reserves the right to amend its response to this request for admission during the course of discovery.

7.) Admit that Shawn Norman is eligible for PIP benefits under MCL 500.3105.

RESPONSE:

Denied as untrue. MCL 500.3105 clearly states that an injured person's eligibility for benefits is "subject to the other provisions of this chapter." The very next section, MCL 500.3106 clearly states that accidental bodily injury does not arise out of the ownership, operation, maintenance or use of a parked motor vehicle as a motor vehicle unless one of statutorily enumerated exceptions applies. In this case, it does not appear that any of the exceptions to the Parked Vehicle Exclusion, set forth in MCL 500.3106 apply. Therefore, Shawn Norman and his medical providers would not be eligible for No Fault benefits.

8.) Admit that Shawn Norman is not excluded from PIP benefits under any exclusion set forth in MCL 500.3113.

RESPONSE:

After making reasonable inquiry, the information known or readily obtainable is insufficient to enable Defendant to admit or deny this request. Defendant has subpoenaed Shawn Norman to appear for a deposition on August 9, 2013, to obtain further information regarding the subject accident.

Defendant reserves the right to amend its response to this request for admission during the course of discovery.

9.) Admit that Defendant has denied Shawn Norman's claim for PIP benefits.

RESPONSE:

Admitted

10.) Admit that Plaintiff's charges have not been paid by Defendant.

RESPONSE:

Admitted.

11.) Admit that PIP benefits are overdue if not paid within thirty (30) days after the insurer receives reasonable proof of the fact and the amount of the loss sustained pursuant to MCL 500.3142.

RESPONSE:

Admitted as a general proposition, only. Defendant denies that this provision is applicable under the facts and circumstances of this claim.

12.) Admit that Defendant received reasonable proof of the fact and that amount of the claim prior to the filing of Plaintiff's Complaint in this matter.

RESPONSE:

Denied as untrue. Defendant has not received reasonable proof of the fact and the amount of the claim and, rather, was only provided with incomplete medical records and medical billings regarding Plaintiffs' alleged treatment of Shawn Norman. Plaintiffs have failed to submit reasonable proof of the fact regarding Shawn Norman's entitlement to No Fault benefits.

Defendant reserves the right to amend its response to this request for admission during the course of discovery.

13.) Admit that Defendant has unreasonably delayed payment of Plaintiff's claim after it received reasonable proof of the fact and the amount of Plaintiff's claim.

RESPONSE:

Denied as untrue. Defendant has not received reasonable proof of the fact and the amount of the claim and, rather, was only provided with incomplete medical records and medical billings regarding Plaintiffs' alleged treatment of Shawn Norman. Plaintiffs have failed to submit reasonable proof of the fact regarding Shawn Norman's entitlement to No Fault benefits.

Furthermore, a legitimate issue of statutory construction exists in this case. MCL 500.3105 clearly states that an injured person's eligibility for benefits is "subject to the other provisions of this chapter." The very next section, MCL 500.3106 clearly states that accidental bodily injury does not arise out of the ownership, operation, maintenance or use of a parked motor vehicle as a motor vehicle unless one of statutorily enumerated exceptions applies. In this case, it does not appear that any of the exceptions to the Parked Vehicle Exclusion, set forth in MCL 500.3106 apply. Therefore, Shawn Norman and his medical providers would not be eligible for No Fault benefits.

Defendant reserves the right to amend its response to this request for admission during the course of discovery.

LAW OFFICES OF RONALD M. SANGSTER, PLLC

BY: _____

RONALD M. SANGSTER, JR. (P39253)
Attorney for Defendant, Westfield Insurance Company

Dated: July 10, 2013

PROOF OF SERVICE

Petra K. Siver hereby certifies that a copy of the foregoing instrument was served upon all attorneys on record for all of the parties herein by mailing same to their attention at their respective business addresses as disclosed within the pleadings of record herein, with postage fully prepaid thereon on the 10th day of July, 2013. I declare under the penalty of perjury that the statement above is true to the best of my knowledge, information and belief.

_____
Petra K. Siver

EXHIBIT 2

Order

February 3, 2015

150384

SPECTRUM HEALTH HOSPITALS
and SPECTRUM HEALTH UNITED,
Plaintiffs-Appellees,

v

SC: 150384
COA: 323804
Kent CC: 14-002515-AV

WESTFIELD INSURANCE COMPANY,
Defendant-Appellant.

_____/

On order of the Court, the application for leave to appeal prior to decision by the Court of Appeals is considered, and it is DENIED, because the Court is not persuaded that the questions presented should be reviewed by this Court before consideration by the Court of Appeals.

h0126

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

February 3, 2015

Clerk

EXHIBIT 3

Court of Appeals, State of Michigan

ORDER

Spectrum Health Hospitals v Westfield Insurance Company

Docket No. 323804

LC No. 14-002515-AV

William B. Murphy
Presiding Judge

Jane M. Beckering

Douglas B. Shapiro
Judges

The Court orders that the application for leave to appeal is DENIED for lack of merit in the grounds presented.

Presiding Judge

A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

MAR 0 2 2015
Date

Chief Clerk

EXHIBIT 4

Order

Michigan Supreme Court
Lansing, Michigan

January 29, 2016

151419

SPECTRUM HEALTH HOSPITALS
and SPECTRUM HEALTH UNITED,
Plaintiffs-Appellees,

v

SC: 151419
COA: 323804
Kent CC: 14-002515-AV

WESTFIELD INSURANCE COMPANY,
Defendant-Appellant.

_____/

On order of the Court, the application for leave to appeal the March 2, 2015 order of the Court of Appeals is considered. We direct the Clerk to schedule oral argument on whether to grant the application or take other action. MCR 7.305(H)(1). The parties shall file supplemental briefs within 42 days of the date of this order addressing: (1) whether *Miller v Auto-Owners Ins Co*, 411 Mich 633 (1981), remains a viable precedent in light of *Frazier v Allstate Ins Co*, 490 Mich 381 (2011), and *LeFevers v State Farm Mut Auto Ins Co*, 493 Mich 960 (2013); and (2) if so, whether *Miller* should be overruled. The parties should not submit mere restatements of their application papers.

The Michigan Association for Justice, Michigan Defense Trial Counsel, Inc., and the Negligence Law Section of the State Bar of Michigan are invited to file briefs amicus curiae. Other persons or groups interested in the determination of the issues presented in this case may move the Court for permission to file briefs amicus curiae.

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

January 29, 2016

Clerk

a0126

EXHIBIT 5

Lefevers v. State Farm Mut. Auto. Ins. Co.

Court of Appeals of Michigan

December 13, 2011, Decided

No. 298216

Reporter
2011 Mich. App. LEXIS 2194; 2011 WL 6186825

CHARLES ANTHONY LEFEVERS, Plaintiff-Appellee, v STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, Defendant-Appellant, and TITAN INSURANCE COMPANY, ZURICH AMERICAN INSURANCE COMPANY, STEADFAST INSURANCE COMPANY, CLARENDON NATIONAL INSURANCE COMPANY and REDLAND INSURANCE COMPANY, Defendants.

Subsequent History: Later proceeding at *Lefevers v. State Farm Mut. Auto. Ins. Co., 493 Mich. 865, 820 N.W.2d 917, 2012 Mich. LEXIS 1668 (2012)*
Appeal granted by *Lefevers v. State Farm Mut. Auto. Ins. Co., 824 N.W.2d 168, 2013 Mich. LEXIS 3 (Mich., 2013)*
Vacated by, Remanded by *Lefevers v. State Farm Mut. Auto. Ins. Co., 2013 Mich. LEXIS 502 (Mich., Apr. 12, 2013)*

Prior History: **[*1]** Wayne Circuit Court. LC No. 08-116325-NF.

Judges: Before: O'CONNELL, P.J., and MURRAY and DONOFRIO, JJ.

Opinion

PER CURIAM.

Defendant, State Farm Mutual Automobile Insurance Company,[1] appeals as of right the trial court's order denying its motion for summary disposition under *MCR 2.116(C)(10)* in this no-fault insurance action.[2] Because the tailgate on plaintiff's dump trailer involved in the accident constitutes "equipment" within the meaning of *MCL 500.3106(1)(b)*, and a question of fact exists regarding whether plaintiff's injury occurred as a direct result of his physical contact with the tailgate, we affirm.

This case arises out of an accident that occurred when plaintiff was attempting to unload DDT contaminated dirt into a landfill from a dump trailer. Plaintiff backed the trailer toward the landfill, bringing his rear tires to a lip at the edge of the landfill. Plaintiff walked to the back of the trailer to release a safety latch on the trailer's tailgate, **[*2]** and then walked back to the front axle of his truck to activate the tailgate release switch. When the tailgate did not swing open as it should have, plaintiff walked to the back of the trailer and attempted to force it open by pushing on the tailgate in the direction of the landfill. The tailgate then broke free and opened, causing plaintiff to lose his balance and fall over the edge, into the landfill. He fell approximately 12 feet onto a concrete base covered by one inch of dirt, injuring his back.

Plaintiff filed a complaint against defendant, his no-fault insurer, seeking first party no-fault benefits. Defendant moved for summary disposition, arguing that the parked vehicle exclusion, *MCL 500.3106(1)*, precluded coverage and that no exceptions to the exclusion applied. In response, plaintiff contended that the circumstances fit squarely within exceptions *MCL 500.3106(1)(a)* and *(b)* to the parked vehicle exclusion because (1) the vehicle was unreasonably parked, (2) he was injured as a direct result of physical contact with equipment permanently mounted on the vehicle, and (3) he was injured as a direct result of contact with

[1] Because State Farm is the only defendant participating in this appeal, our reference to "defendant" refers to that entity only.

[2] The trial court entered a stipulated judgment that preserved defendant's right to appeal the trial court's ruling.

property being lowered from the vehicle. The trial court **[*3]** agreed with plaintiff on all three grounds and denied defendant's motion.

We review de novo a trial court's decision on a motion for summary disposition. *Blue Harvest, Inc v Dep't Of Transp, 288 Mich App 267, 271; 792 NW2d 798 (2010)*. A motion under *MCR 2.116(C)(10)* tests the factual sufficiency of the complaint. *BC Tile & Marble Co v Multi Bldg Co, Inc, 288 Mich App 576, 582; 794 NW2d 76 (2010)*. In reviewing a motion under subrule (C)(10), this Court considers the affidavits, pleadings, depositions, admissions, and other evidence in the light most favorable to the nonmoving party. *Corley v Detroit Bd of Ed, 470 Mich 274, 278; 681 NW2d 342 (2004)*. "Summary disposition is appropriate if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *Latham v Barton Malow Co, 480 Mich 105, 111; 746 NW2d 868 (2008)*. A genuine issue of material fact exists "when reasonable minds could differ on an issue after viewing the record in the light most favorable to the nonmoving party." *Allison v AEW Capital Mgt, LLP, 481 Mich 419, 425; 751 NW2d 8 (2008)*.

This Court also reviews de novo issues involving statutory interpretation. *Chandler v Co of Muskegon, 467 Mich 315, 319; 652 NW2d 224 (2002)*. **[*4]** "When interpreting statutory language, our obligation is to ascertain the legislative intent that may reasonably be inferred from the words expressed in the statute." *Id.* If the statutory language is unambiguous, "it is presumed that the Legislature intended the meaning plainly expressed, and judicial construction of the statute is not permitted." *Paris Meadows, LLC v City of Kentwood, 287 Mich App 136, 141; 783 NW2d 133 (2010)*.

MCL 500.3105(1) of the no-fault act, *MCL 500.3101 et seq.*, requires an insurer to pay personal protection insurance benefits to its insured "for accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle . . . ." *MCL 500.3106(1)* provides that "[a]ccidental bodily injury does not arise out of the ownership, operation, maintenance, or use of a parked vehicle as a motor vehicle," unless one of the following three exceptions is met:

> (a) The vehicle was parked in such a way as to cause unreasonable risk of the bodily injury which occurred.
>
> (b) Except as provided in subsection (2),[3] the injury was a direct result of physical contact with equipment permanently mounted on the vehicle, while the equipment **[*5]** was being operated or used, or property being lifted onto or lowered from the vehicle in the loading or unloading process.
>
> (c) Except as provided in subsection (2), the injury was sustained by a person while occupying, entering into, or alighting from the vehicle. [Footnote added.]

These exceptions to the exclusion of coverage for parked vehicles represent situations in which, "although the vehicle is parked, its involvement in an accident is nonetheless directly related to its character as a motor vehicle." *Miller v Auto-Owners Ins Co, 411 Mich 633, 640-641; 309 NW2d 544 (1981)*. The trial court denied defendant's motion for summary disposition based on subsections (a) and (b).

We first address defendant's argument that subsection (b) is inapplicable because the tailgate did not constitute "equipment" within the meaning of that provision. As stated above, subsection (b) provides that accidental bodily injury arises out of the operation and use of a parked vehicle as a motor vehicle if the injury was a direct result of physical contact with equipment permanently mounted on the vehicle while **[*6]** the equipment was being used. In *Miller*, our Supreme Court stated:

> Section 3106(b) recognizes that some parked vehicles may still be operated as motor vehicles, creating a risk of injury from such use as a vehicle. Thus a parked delivery truck may cause injury in the course of raising or lowering its lift or the door of a parked car, when opened into traffic, may cause an accident. Accidents of this type involve the vehicle as a motor vehicle. [*Id. at 640*.]

In *Gunsell v Ryan, 236 Mich App 204, 210 n 5; 599 NW2d 767 (1999)*, this Court held that the rear door of a semitrailer constituted "equipment" under subsection (b). Conversely, this Court has held that bumpers and taillights do not constitute "equipment" because they are integral parts of all motor vehicles, and to hold

[3] Subsection (2) pertains to worker's disability compensation, which is not at issue in this case.

otherwise would allow the exception to swallow the rule. Amy v MIC Gen Ins Corp, 258 Mich App 94, 127-128; 670 NW2d 228 (2003), rev'd in part on other grounds sub nom Stewart v State of Michigan, 471 Mich 692; 692 NW2d 376 (2004).

We hold that the tailgate on the trailer in this case constitutes "equipment" within the meaning of subsection (b). Similar to the rear door of the semitrailer in *Gunsell*, plaintiff here was **[*7]** injured while attempting to open the rear tailgate of his dump trailer. Moreover, the *Miller* Court recognized that the lift of a delivery truck constitutes equipment. Miller, 411 Mich at 640. Because the facts of this case fall squarely within the circumstances contemplated in *Gunsell* and *Miller*, the tailgate on the dump trailer constitutes "equipment permanently mounted on the vehicle," as stated in subsection (b).

Defendant argues that the tailgate is an integral part of the dump trailer in the same way that a trunk is an integral part of a car and that, to allow tailgates and trunks to qualify as "equipment" would allow the exception to swallow the rule. Defendant's argument is misguided because the exception set forth in subsection (b) further requires that the equipment be in operation or use when the injury occurred. See MCL 500.3106(1)(b). The exception precludes coverage if, for example, a person runs into the trunk of a parked car or the tailgate of a parked truck because, in those circumstances, the "equipment" is not in use. Thus, the statutory requirement of "use" or "operation" prevents the exception from swallowing the rule.

Defendant also argues that subsection (b) in **[*8]** inapplicable because plaintiff's contact with the tailgate did not directly result in his injury. Rather, defendant contends that plaintiff's injury was a direct result of his landing on concrete. To show that an injury directly resulted from physical contact with equipment, a plaintiff must show that "the injury [had] a causal relationship to the motor vehicle that is more than incidental, fortuitous, or but for." Putkamer v Transamerica Ins Corp of Am, 454 Mich 626, 635-636; 563 NW2d 683 (1997). The determination whether an injury was a direct result of physical contact with equipment on a vehicle is a question of fact to be determined by the trier of fact. See Ritchie v Fed Ins Co, 132 Mich App 372, 374-375; 347 NW2d 478 (1984). In *Ritchie*, the plaintiff was injured when stairs collapsed beneath him while he was loading a truck. This Court held that a question of fact existed regarding whether the plaintiff's injury "directly resulted" from the loading process because a trier of fact could find that the weight of the cargo, rather than the plaintiff's weight alone, caused the stairs to collapse. Ritchie, 132 Mich App at 375.

Here, a trier of fact may similarly find that plaintiff's **[*9]** injury was a direct result of his physical contact with the tailgate, which caused an abrupt shift in plaintiff's momentum when it suddenly broke free. Although plaintiff was injured when he landed on the concrete, he also presented evidence that pushing on the tailgate was a cause of his injury, and a question of fact remains regarding which of these factors, independently or in the aggregate, directly resulted in his accidental bodily injury. Because the tailgate constitutes equipment, and plaintiff presented evidence that pushing on it caused his fall, a question of fact exists regarding whether plaintiff's injuries directly resulted from his pushing on the tailgate.[4] Accordingly, the trial court properly denied defendant's motion for summary disposition in this regard.

Defendant also argues that the trial court erred by finding that a genuine issue of material fact exists regarding whether plaintiff's injury occurred as "a direct result of physical contact with . . . property being lifted onto or lowered from the vehicle in the loading or unloading process." MCL 500.3106(1)(b). We agree with defendant that summary disposition was appropriate. Plaintiff failed to present any evidence that his injury was a direct result of physical contact with the dirt that he was unloading. Plaintiff argues that the force of the dirt in the trailer applied pressure to the tailgate, causing it to swing open, which in turn caused his fall. The statutory language, however, requires that plaintiff's injury occur as a result of physical contact with the property being lifted or lowered from the vehicle, i.e., the contaminated dirt. Plaintiff's argument therefore fails. See Winter v Auto Club of Michigan, 433 Mich 446,

[4] We also reject defendant's argument that summary disposition was appropriate because plaintiff's injury did not occur as a result of his direct physical contact with the tailgate. This argument misreads the statute, which states that an injury must be the "direct result of physical contact" with equipment on the vehicle. Defendant's argument ignores the placement of the word "direct" in the statute and misreads the **[*10]** statute as requiring that an injury occur as a result of "direct physical contact" with equipment on the vehicle.

458-460; 446 NW2d 132 (1989). Because this aspect of subsection (b) is inapplicable, summary disposition was appropriate.

Further, defendant argues **[*11]** that the trial court erred by holding that the manner in which the dump trailer was parked presented an unreasonable risk of harm such that the exception to the parked vehicle exclusion set forth in MCL 500.3106(1)(a) is applicable. "[F]actors such as the manner, location, and fashion in which a vehicle is parked are material to determining whether the parked vehicle poses an unreasonable risk." Stewart, 471 Mich at 698-699. In *Stewart*, the Court held that a police car, with its emergency lights flashing, parked in the middle of a highway to provide emergency services to a stalled vehicle, did not present an unreasonable risk within the meaning of subsection (a). Id. at 699. The Court noted that the stalled vehicle itself presented a risk of bodily injury and that other lanes on the road were available for use. The Court held that, under the circumstances, an oncoming driver would have sufficient opportunity to recognize and avoid the hazard posed by the police vehicle. *Id.*

Generally, the cases to which the exception under subsection (a) has been applied involve vehicles that impede traffic parked on roadways. See, e.g., Wills v State Farm Ins Co, 437 Mich 205, 211-212; 468 NW2d 511 (1991). **[*12]** In *Wills*, the Court noted that courts addressing this issue have "appropriately held that a vehicle, parked in a prudent fashion and out of the flow of traffic, does not create an unreasonable risk of injury under" the exception. *Id.*

In accordance with this precedent, we hold that plaintiff's dump trailer parked adjacent to the landfill did not present an unreasonable risk of bodily injury. The trailer was parked in a manner consistent with the general practice of the landfill, in which trucks are parked with their tires at the edge of a lip at the top of the landfill. This manner of parking was necessary to ensure that the hazardous material being dumped would fall into the landfill and avoid spilling outside the pit. The trailer, while parked at the dump site, did not impede traffic or create any risk related to the trailer's use as a motor vehicle. Moreover, parking next to the landfill, without more, did not cause a risk of injury. Had the tailgate opened as expected, plaintiff would not have been required to step near the pit and would have been able to dump the contaminated dirt into the pit without incident. The situation became dangerous only when the tailgate stuck, and plaintiff **[*13]** approached the landfill to force it open. Thus, the vehicle was not parked in a manner such as to cause an unreasonable risk of bodily injury, and the trial court erred by denying defendant's motion for summary disposition in this respect.

In sum, we hold that the tailgate on the dump trailer constituted equipment permanently attached to the vehicle and that plaintiff's evidence was sufficient to establish a genuine issue of material fact regarding whether his injury occurred as a direct result of his physical contact with the tailgate. We further conclude that the trial court erred by finding that questions of fact exist regarding whether the trailer was parked in such a fashion as to cause an unreasonable risk of harm and whether plaintiff was injured as a direct result of physical contact with the dirt being dumped from the vehicle. Because plaintiff needed to establish only one of the exceptions under MCL 500.3106(1) to qualify for no-fault coverage, we affirm the trial court's order denying defendant's motion for summary disposition.

Affirmed.

/s/ Peter D. O'Connell

/s/ Christopher M. Murray

/s/ Pat M. Donofrio